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Patent
Attorney's Docket No. 032796-101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
)
Lynn A. DOUCETTE-STAMM et al.) Group Art Unit: 1656
)
Application No.: 10/092,411) Examiner: unassigned
)
Filed: March 7, 2002) Confirmation No.: 9046
)
For: NUCLEIC ACID AND AMINO)
ACID SEQUENCES RELATING TO)
STAPHYLOCOCCUS EPIDERMIDIS)
FOR DIAGNOSTICS AND)
THERAPEUTICS)

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SEP 26 2002

TECH CENTER 1600/2900

PRELIMINARY AMENDMENT

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OCT 09 2002

TECH CENTER 1600/2900

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Prior to examination on the merits and in response to the Notice to Comply with the Requirements for Patent Applications Containing Nucleotide Sequences and/or Amino Acid Sequence Disclosures mailed April 22, 2002, Applicants hereby submit the following Preliminary Amendment in the above-identified application. A Petition requesting a two-month extension of time and the corresponding petition fee under 37 C.F.R. § 1.17(a)(2) accompany this Preliminary Amendment which is being filed on its due date of August 22, 2002. Please amend the application as follows:

AMENDMENTS UNDER 37 C.F.R. § 1.115

In the Specification:

Please replace the Specification filed on March 7, 2002 with the attached amended substitute Specification.

Application No. 10/092,411
Attorney's Docket No. 032796-101
Page 2

In the Sequence Listing:

Please substitute the Sequence Listing submitted on CD-ROM (3 copies) and Declaration under 37 C.F.R. §§ 1.821-1.825 filed on March 7, 2002 with the corrected Sequence Listing submitted on CD-ROM (3 copies) and accompanying new Declaration under 37 C.F.R. §§ 1.821-1.825.

Application No. 10/092,411
Attorney's Docket No. 032796-101
Page 3

REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.115, are respectfully requested.

1. SEQUENCE LISTING

In response to the April 22, 2002 Notice to Comply with the Requirements for Patent Applications Containing Nucleotide Sequences and/or Amino Acid Sequence Disclosures, Applicants hereby submit a new Sequence Listing in computer readable form on CD-ROM (3 copies) and an accompanying Declaration under 37 C.F.R. §§ 1.821-1.825. The new Sequence Listing in computer readable form corrects the errors noted on the Raw Sequence Listing Error Report that was attached to the April 22, 2002 Notice to Comply. Thus, this corrected Sequence Listing in computer readable form complies with the requirements of 37 C.F.R. §§ 1.822-1.823. A copy of the April 22, 2002 Notice to Comply is attached hereto.

This Sequence Listing includes two additional sequences SEQ ID NO: 5675 and SEQ ID NO: 5676 which correspond to the nucleotide sequences of the primers on page 72 of the Specification as originally filed.

Therefore, no prohibited new matter is believed to have been added by this amendment.

2. SUBSTITUTE SPECIFICATION

By the present amendment, a substitute Specification (and marked-up copy) is submitted in the attachment to the Preliminary Amendment. The substitute Specification adds pages 21 and 79-318 which were identified as missing in the Notice to Comply from the originally filed Specification. These pages were inadvertently omitted from the originally filed Specification. Basis for these pages can be found in the parent application, Application No. 09/134,001, from which the above-identified application claims priority. The substitute Specification also corrects an inadvertent typographical error made on page 21. Therefore, the present amendment does not introduce any prohibited new matter.

3. PETITION FOR AN EXTENSION OF TIME

Applicants submit that the April 22, 2002 Notice to Comply with the Requirements for Patent Applications Containing Nucleotide Sequences and/or Amino Acid Sequence Disclosures contains contradictory statements with regard to the availability of extensions of time. On the one hand, the April 22, 2002 Notice to Comply indicates that the previously submitted Sequence Listing in computer readable form fails to comply with the requirements of 37 C.F.R. §§ 1.822 and 1.823 and that extensions of time may be obtained under the provisions of 37 C.F.R. § 1.136(a). See, April 22, 2002 Notice to Comply, second sentence. Applicants submit that this indication of the availability of extensions of time for correcting the Sequence Listing is consistent with the normal procedure regarding Sequence Listings corrections. See, M.P.E.P. § 2421.03.

On the other hand, the April 22, 2002 Notice to Comply indicates that pages 21 and 79-318 of the Specification are missing and that Applicant has only two months from the date of this Notice from which to respond. This contradicts the second sentence of the Notice which indicates that the extensions are available. In an attempt to clarify this contradiction, Applicants contacted the Customer Service Center of the Office of Initial Patent Examination of the United States Patent & Trademark Office. During a telephonic conversation on August 8, 2002 at 11:00 a.m., Joyce Riley of the Customer Service Center of the Office of Initial Patent Examination informed Applicants that extensions of time are available for responding to the April 22, 2002 Notice to Comply. Relying on this instruction from the Office and on the normal practice for handling Sequence Listing corrections, Applicants hereby submit that the petition for a two-month extension of time from which accompanies this Preliminary Amendment is proper. Therefore, in view of this petition for an extension of time, Applicants submit that the Preliminary Amendment and the accompanying Substitute Specification are timely filed.

4. CONCLUSION

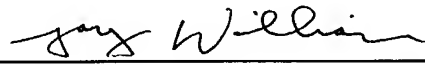
In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

Application No. 10/092,411
Attorney's Docket No. 032796-101
Page 6

In the event that there are any questions relating to this application, it would be appreciated if the Office would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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